

Service Date: February 14, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of the City of Great Falls, a)	
Municipality, for Authority to)	DOCKET NO. 90.10.66
Establish Increased Rates for)	
Sewer Service)	ORDER NO. 5522f

PROTECTIVE ORDER

On January 28, 1991 Envirotech Operating Services (EOS) filed a motion with the Montana Public Service Commission (Commission) requesting issuance of a protective order for those documents provided by the City of Great Falls (City) in response to the First Data Request of Federal Executive Agencies (FEA), specifically Data Requests 34 and 35.

EOS asserts that the information requested contains proprietary rate structuring data and that such data is a trade secret as defined in Section 30-14-402, MCA.

Based upon the foregoing, the following Protective Order shall be in effect with respect to those documents provided by the City in response to the First Data Request of FEA, Data Requests 34 and 35, and any subsequent similarly drafted data requests:

Proprietary Information. All documents, data and information furnished by the City, and claimed by EOS to constitute a trade secret, shall only be furnished pursuant to the terms of this order and shall be treated by all persons as constituting a trade secret (hereinafter referred to as "Proprietary Information"). All material claimed to be Proprietary Information must be marked with an appropriate designation and submitted on yellow paper so that it is easily identified.

Terms of Disclosure. All Proprietary Information made available pursuant to this order shall be given solely to counsel for the Commission and those persons or organizations appearing on the Service List for Docket No. 90.10.66. Said Proprietary Information shall not be used or disclosed except for the purposes of this proceeding and in accordance with this Order.

Petition for Disclosure. Any member of the public or other interested party with proper standing may specially petition the Commission for access to the Proprietary Information pursuant to the terms of this order. Such Petitioner must demonstrate to the Commission that his or her interest in this proceeding requires access to the Proprietary Information. The City and EOS shall receive notice of any such petition and shall have a period of 14 days thereafter to file an objection or response prior to the Commission's ruling. If such Petition is granted, said party shall be accorded access to the Proprietary Information pursuant to the terms of this Order, and shall be bound by all its terms. Prior to disclosure, said party shall submit a signed nondisclosure agreement (Exhibit "A") pursuant to Paragraph 4 below.

Nondisclosure Agreement. Prior to giving access to Proprietary Information as contemplated in Paragraphs 2 and 3 above, the person or party seeking access shall agree in writing to comply with and be bound by this Order. In connection therewith, Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement. All nondisclosure agreements must be delivered to counsel for the City, EOS, and the Commission.

Challenge to Trade Secret Status. This order establishes a procedure for the expeditious handling of information that EOS claims constitutes a trade secret, but it shall not be construed as an agreement or ruling on the trade secret status of any such information. Any party to a proceeding before the Commission, any member of the public or interested party with proper standing, or the Commission upon its own motion, may challenge EOS's claim of trade secret status at any time. Any such Petition or Motion must be served upon the City and EOS, which may then file a response or objection within 14 days thereafter. The City or EOS may request a hearing or oral argument before the Commission.

Review and Hearing. If EOS's claim of trade secret status is so challenged, resolution of the issue shall be made by a Hearing Examiner and/or the Commission. Review and consideration of all motions, pleadings and other materials filed in connection with such a challenge shall be in camera. Any in camera proceeding shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to Proprietary Information shall be present. The record of any such in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 90.10.66." It shall be transcribed only upon agreement of all participating parties, or by order of the Hearing Examiner or the Commission; and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order. In the event that the Hearing Examiner or the Commission should rule that certain information should be removed from the protective requirements of this order, the parties shall not disclose such information or use it in the

public record for a period of seven (7) business days thereafter so that the providing party shall be afforded a reasonable opportunity to seek a stay or other appropriate relief.

Seal. While in the custody of the Commission or any other person or party, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 90.10.66."

Application to Open Meetings and Public Records Laws. Due to its private nature, materials subject to this Order and in the possession of the Commission or any other state agency or entity shall not be subject to disclosure under the open meetings or public records statutes.

Use in Pleadings, Briefs, etc. Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be by citation to title or exhibit number, or some other nonconfidential description. Any further use or substantive reference to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only upon counsel (one copy each) who have signed a nondisclosure agreement. All the protections afforded in this order apply to materials prepared and distributed pursuant to this paragraph.

Use in Commission Orders. The Hearing Examiner or the Commission will attempt to refer to Proprietary Information in only a general or conclusionary form, and to the greatest extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of the order under seal. This sealed section shall be served only on counsel (one copy each) who have signed a nondisclosure agreement. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission after signing a nondisclosure agreement.

Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Proprietary Information by reason of this order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than those described in Paragraph 2 above.

Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend the provisions hereof as it deems appropriate, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 11th day of February, 1991 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.